

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

MICHAEL EDWARD ALLEN,)	
)	
Plaintiff,)	
v.)	No. 1:07-cv-1006-SEB-DML
)	
CAPTAIN LINDA MYERS, et al.,)	
)	
Defendants.)	

Entry Discussing Motion to Set Aside Judgment

"Rule 60 of the FED. R. CIV. P. regulates the procedure for obtaining relief from final judgments." *Arrieta v. Battaglia*, 461 F.3d 861, 864 (7th Cir. 2006)(citing *Wesco Prods. Co. v. Alloy Auto. Co.*, 880 F.2d 981, 983 (7th Cir. 1989)). The rule attempts to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice should be done." 11 Charles Alan Wright and Andrew D. Liepold, **Federal Practice and Procedure** § 2851 (4th ed. 2008).

"A Rule 60(b) motion permits relief from judgment [only] when it is based on one of six specific grounds listed in the rule." *Talano v. Northwestern Med. Faculty Found.*, 273 F.3d 757, 762 (7th Cir. 2001). A motion for relief from judgment pursuant to Rule 60(b) permits a party to seek relief from judgment on the grounds of mistake, inadvertence, excusable neglect, newly discovered evidence, and fraud. *American Federation of Grain Millers, Local 24 v. Cargill Inc.*, 15 F.3d 726, 728 (7th Cir. 1994). It also authorizes relief for "any other reason justifying relief from the operation of the judgment." Rule 60(b), **F.R.Civ.P.**

Final judgment in this civil rights action was entered on the clerk's docket on October 30, 2008. This disposition was based on the court granting the defendants' unopposed motion for summary judgment contending that the plaintiff had failed to properly exhaust available administrative remedies prior to filing this action.

A movant has a "reasonable" period of time in which to file a Rule 60(b) motion, subject in some circumstances to a 1-year maximum. See *Berwick Grain Co. v. Illinois Dep't of Agric.*, 189 F.3d 556, 560 (7th Cir. 1999) (citations omitted); *Kagan v. Caterpillar Tractor Co.*, 795 F.2d 601, 610 (7th Cir. 1986). The one-year cap is an "extreme outer limit," and the Seventh Circuit has repeatedly cautioned that "even a motion filed within a year will be rejected as untimely if not made within a reasonable time." *Berwick Grain Co.*, 189 F.3d at 560 (citations omitted). "What constitutes a 'reasonable time' ultimately depends on the facts of each case including the reason for delay, the practical ability of the litigant to have learned about the grounds of the judgment earlier, and the degree of prejudice to the other parties." *Kagan*, 795 F.2d at 610 (quoting Rule 60). This time limit

is jurisdictional and cannot be extended. *Arrieta v. Battaglia*, 461 F.3d 861, 864 (7th Cir. 2006). A motion under the "catchall" provision contained in Rule 60(b)(6) also must be made "within a reasonable time."

The plaintiff's motion to set aside judgment was filed in this case on December 11, 2009. It was not filed either within one (1) year from the entry of judgment on the clerk's docket or within a reasonable time. There is nothing in the post-judgment motion, as there is nothing in any other post-judgment filing, indicating that the plaintiff required in excess of 13 months after the entry of final judgment in which to file a motion for relief from judgment. That motion, in fact, fails to specify any specific basis available under Rule 60(b) for relief. That motion, in fact, fails to reference or even allude to the basis for the disposition here. These circumstances, therefore, fail to suggest that the motion to set aside judgment was filed within a reasonable time, and the court specifically concludes that it was not filed within a reasonable time. Accordingly, the motion to set aside (dkt 54) is **denied for lack of jurisdiction.**

IT IS SO ORDERED.

Date: 12/22/2009



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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